

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

JENELL HARTMAN,

Plaintiff,

No. 09cv1166

vs.

BIG LOTS STORES, INC.

Defendant.

**DEFENDANT'S NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Big Lots Stores, Inc. hereby gives notice of its removal of this action from the Second Judicial District Court for the County of Bernalillo, New Mexico, to the United States District for the District of New Mexico. As grounds for removal, Defendant states as follows:

1. Plaintiff Jenell Hartman filed her Complaint in this action on November 16, 2009, in the Second Judicial District Court for the County of Bernalillo, New Mexico, where it was docketed as Case No. CV 2009 13408. On November 19, 2009, Defendant was served with the Summons and Complaint for Unlawful Failure to Pay Overtime Wages. A true and correct copy of each of the aforementioned documents is attached as Exhibit A. No other process, pleadings, or orders have been served on Defendant in this action.

2. This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1441 and 1446, which provide that any civil action brought in state court of which the district courts of the United States have original jurisdiction may be removed to the appropriate federal court. Pursuant to 28 U.S.C. §§ 1331, the district courts have original jurisdiction over civil actions founded on a claim or right arising under the Constitution, treaties or laws of the United States.

3. Plaintiff alleges a violation of her rights pursuant to 29 U.S.C. § 201, *et seq.* (“FLSA”), and such are claims or rights arising under the laws of the United States. Accordingly, the requirements of 28 U.S.C. § 1331 are satisfied.

4. In the Complaint, Plaintiff also alleges violations of New Mexico law arising out of her employment with Defendant. Because Plaintiff’s state law claims are “so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution,” this Court may properly exercise supplemental jurisdiction over Plaintiff’s state law claims. 28 U.S.C. § 1367.

5. Defendant was served with the Complaint on November 19, 2009. Accordingly, this Notice of Removal is filed within thirty (30) days of receipt by Defendant of a copy of the initial pleading setting forth the claim for relief upon which the action is based, in accordance with 28 U.S.C. § 1441(b).

6. Notice of Filing this Notice of Removal will be sent to Plaintiff and the Notice of Filing of Notice of Removal will be filed with the Second Judicial District Court. A true copy of the Notice of Filing of Notice of Removal is attached hereto as Exhibit B.

7. Defendant has complied with all provisions of 28 U.S.C. § 1446, governing the procedure for removal.

8. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

9. James E. Davidson, Esq., of The Law Firm Of Schottenstein, Zox and Dunn, in Columbus, Ohio will appear as co-counsel in this matter. Counsel for Defendant, Agnes Fuentevilla Padilla, certifies that he has been a member of the State Bar of Ohio since 1980 and

is in good standing. He is also admitted to practice in the United States District Court for the Northern District of Ohio and the Southern District of Ohio.

10. WHEREFORE, Defendant hereby requests this action be removed from the Second Judicial District Court of Bernalillo County, New Mexico, to the United States District for the District of New Mexico.

Respectfully submitted,

/s/ Agnes Fuentevilla Padilla

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of December 2009, I served a copy of the foregoing *Defendant's Notice of Removal* by regular U.S. Mail, postage prepaid, upon:

Deena B. Beard  
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Albuquerque, NM 87110  
*Attorneys for Plaintiff*

/s/ Agnes Fuentevilla Padilla  
Agnes Fuentevilla Padilla